IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1422 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASHBHAI LALABHAI MACHAAR

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HL JANI, AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2001

ORAL JUDGEMENT

1. Heard Mr.M. M. Tirmizi, learned advocate for the petitioner and Mr.H. L. Jani, learned AGP for the respondents.

2. In the present petition, under Article 226 of the Constitution of India, the order of detention dated

13/12/2000 has been challenged by the petitioner. The order of detention has been passed by the District Magistrate, Dahod under Section 3(1) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"). The present petitioner - detenu has been detained at District Jail Porbandar as a Class-II detenu. Looking to the ground of detention in all seven offences have been registered against the petitioner and last offence has been registered on 5/8/2000. The statements of the secret witnesses were recorded on 9/6/2000, which were verified by the D.Y.S.P. on 20/9/2000 and, thereafter, the same were verified by the Sub-Divisional Magistrate, Dahod on 15/11/2000. Similarly, the second statement of the secret witness was recorded on 16/6/2000 and the same was verified by the D.Y.S.P. on 20/9/2000 and again verified by the Sub-Divisional Magistrate, Dahod on 22/11/2000. The third statement of the secret witness was recorded on 3/7/2000 and the same was verified by the D.Y.S.P. on 20/9/2000 and the same was not verified by the Sub-Divisional Magistrate, Dahod, as the third witness was not available at the time of verification. The forth statement of the secret witness was recorded on 3/7/2000 and the same was verified by the D.Y.S.P. on 20/9/2000 and the same was verified by the Sub-Divisional Magistrate, Dahod on 24/10/2000. The four statements of the secret witnesses have been recorded on 5/7/2000 and the same were verified by the D.Y.S.P. on 20/9/2000 and the Sub-Divisional Magistrate, Dahod was also verified the same on 5/11/2000. The order of detention has been passed by the District Magistrate, Dahod, who has not verified the statements of the secret witnesses. The specific contentions have been raised in Ground-(m) and (n) of the petition, the petitioner has been considered as a dangerous person under Section 2(c) of the PASA Act and the detaining authority has claimed the privilege under Section 9(2) of the PASA Act. The respondents have filed affidavit-in-reply.

3. Mr.M. M. Tirmizi, learned advocate for the petitioner has raised various contentions challenging the order of detention, but according to him two contentions are enough to vitiate the order of detention. Mr.Tirmizi has submitted that while claiming the privilege by the detaining authority under Section 9(2) of the PASA Act, it is a duty to apply the mind and to examine the genuineness of the factual aspects narrated by the secret witnesses before him. But looking to the record, which are not disputed between the parties that none of the statements of the secret witnesses have been verified by the detaining authority, though specific contention has

been raised, but no any explanation has been given by the detaining authority as to why the statements of the secret witnesses were not verified by him. Mr.Tirmizi has relied upon the order of detention passed by the Sub-Divisional Magistrate, Dahod who have verified the statements of the secret witnesses, but his subjective satisfaction is not established from the record, while considering the statements of the secret witnesses and, therefore, according to Mr.Tirmizi the order of detention is required to be quashed and set aside.

4. In respect to the second contention, the learned advocate for the petitioner has also submitted that looking to the last offence registered on 5/8/2000 and the order of detention has been passed on 30/12/2000, there were about more than three months delay in passing the order of detention, which has not been explained by the detaining authority and, therefore, the order of detention is required to be quashed and set aside. Mr.Tirmizi has relied upon the decision of this Court in the case of Elesh Nandubhai Patel v/s. Commissioner of Police, Ahmedabad City & others, reported in 1997 (1) GLR 381.

5. Mr.H.L.Jani, learned AGP for the respondents has submitted that looking to the seriousness of the offence about the seven offences which were registered against the present petitioner, the order of detention has rightly been passed by the detaining authority. Mr.Jani has also submitted that looking to the facts and circumstances and material on record justified by the detaining authority. Mr.Jani has also submitted that subjective satisfaction of the detaining authority has been established from the record. Mr.Jani has also submitted that looking to the facts that there were compelling circumstances to pass the detention order otherwise, the activities which have been carried out by the petitioner definitely adverse affected to the public order and, therefore, there was no option with the detaining authority except to pass the order of detention. Therefore, the order of detention is legal and valid. Mr.Jani has relied upon para-(12) and (13) of the reply filed by the detaining authority.

6. I have considered the submissions made by the learned advocates of respective parties. Looking to the first contention none of the statements of the secret witnesses were verified by the detaining authority, while claiming the privilege under Section 9(2) of the PASA Act. The order of detention is required to be quashed and set aside because it is a duty of the detaining

authority to justify the detention order by proving the subjective satisfaction from the record. One statement of the secret witness was not verified personally by the detaining authority then the subjective satisfaction in passing the order of detention cannot be considered especially. It is also necessary to note that not to verify the statements of the secret witnesses and also claiming the privilege on the same ground under Section 9(2) of the PASA Act which adversely affected the legal right of the detenu for making effective representation under Article 22(5) of the Constitution of India. Therefore, the detaining authority has passed the detention order in mechanical manner as well as in arbitrary manner without examining the statements of the secret witnesses and without verifying the genuineness of the factual aspects of the statements made by the secret witnesses. Therefore, according to my opinion, on this ground also the order of detention is required to be quashed and set aside.

7. In respect to the second contention, the last offence was registered on 5/8/2000 and the order of detention has been passed on 13/12/2000, there was such delay in passing the order of detention remains unexplained and, therefore, the view taken by this Court in the case of Elesh Nandubhai Patel v/s. Commissioner of Police, Ahmedabad City & others, reported in 1997 (1) GLR 381, the relevant para-(21) of the judgment is quoted as under :-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. he was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. it is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the

reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli. SCC 61."

8. In view of the aforesaid observation made by this Court and looking to the facts which are on record that none of the statements of the secret witnesses verified by the detaining authority and inspite of that fact the claimed the privilege under Section 9(2) of the PASA Act which adversely affected the legal right of the petitioner for making effective representative under Article 22(5) of the Constitution of India and not to explain the delay in passing the detention order from the last date of offence registered on 5/8/2000. According to my opinion, the order of detention is required to be quashed and set aside.

9. For the aforesaid reasons, the petition succeeds and the same is allowed. The order of detention dated 13/12/2000 is vitiated and resulted to quash and set aside. The detenu Prakashbhai Lalabhai Machaar, who has been detained at District Jail Porbandar be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H. K. RATHOD,J.)

(vrpanchal)